

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Chaves	Team: Squad #2	CCRB Case #: 201706120	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 07/28/2017 9:30 AM	Location of Incident: 21 Mercer Street	Precinct: 01	18 Mo. SOL 1/28/2019	EO SOL 1/28/2019	
Date/Time CV Reported Fri, 07/28/2017 9:49 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 07/28/2017 9:49 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Evan Mele	04939	952002	001 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Patrick Venetek	10886	942662	001 PCT
2. POM Alexander Delgiorno	06759	950295	001 PCT
3. POM Eugene Schatz	24387	923127	001 PCT
4. POM Wilson Lozada	01633	953015	001 PCT
5. POM Michael Welsome	22600	958168	001 PCT
6. POF Lauren Schleifer	02861	957142	001 PCT
7. POF Diana Spinosa	24148	953437	001 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Evan Mele	Force: Police Officer Evan Mele used pepper spray against § 87(2)(b)	
B.POM Evan Mele	Force: Police Officer Evan Mele used pepper spray against § 87(2)(b)	
C.POM Evan Mele	Force: Police Officer Evan Mele used pepper spray against § 87(2)(b)	
D.POM Evan Mele	Force: Police Officer Evan Mele used pepper spray against § 87(2)(b)	
E.POM Evan Mele	Force: Police Officer Evan Mele used pepper spray against § 87(2)(b) t § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
F.POM Evan Mele	Force: Police Officer Evan Mele used pepper spray against individuals.	
G.POM Evan Mele	Force: Police Officer Evan Mele used physical force against § 87(2)(b)	

Case Summary

On July 28, 2017, § 87(2)(b) filed this complaint with the CCRB via telephone.

At approximately 9:30 a.m. on July 28, 2017, § 87(2)(b) was waiting in a large crowd of people outside of the Nike store located at 21 Mercer Street in Manhattan. Also present in this crowd were § 87(2)(b)'s girlfriend), § 87(2)(b) and § 87(2)(b). § 87(2)(b) was one of several security guards who were standing between the crowd and the entrance of the store. The crowd had formed in anticipation of the Nike store opening and selling a limited number of pairs of sneakers, which were widely expected to be profitable resale items.

Several NYPD units responded to reports about the crowd, including Police Officer Evan Mele and Police Officer Alexander Delgiorno of the 1st Precinct. After arriving on scene, Police Officer Mele waited and observed the crowd. When the store door was opened and members of the crowd rushed towards it, Police Officer Mele approached the edge of the crowd and deployed pepper spray that landed on § 87(2)(b) and others (**Allegations A, B, C, D, E, and F**). As he approached the crowd, deployed the spray, and was surrounded by people leaving the affected area, Police Officer Mele allegedly struck § 87(2)(b)'s abdomen with his arm (**Allegation G**). No arrests were made or summonses issued during this incident.

The investigation obtained video footage of this incident. This footage came from a security camera inside of the Nike store, a security camera on the exterior of a residential building located across Mercer Street from the Nike Store, and handheld video recordings posted publicly on YouTube. These recordings are embedded below and attached in IAs #94, 95, 96, and 126 (Board Review 01, 02, 03, and 18).



2017-10-26_12-35-22_Arrival.mp4



2017-10-26_12-47-57_OC_Spray.mp4



2017-10-26_12-04-31_Nike.mp4



2017-11-30_18-29-22_YouTube_Clips.mp4

Mediation, Civil and Criminal Histories

- Both § 87(2)(b) and § 87(2)(b) were offered mediation in regards to this incident, but declined § 87(2)(b).
- A request for any Notice of Claim filed in regards to this incident has been submitted to the New York City Comptroller's Office and the results § 87(2)(b) be added to the case file upon receipt.
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs) [REDACTED]
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs) [REDACTED]

- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs) [REDACTED]
- § 87(2)(b) [REDACTED]
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs) [REDACTED]

Potential Issues

§ 87(2)(b) and § 87(2)(b) all provided telephone statements in which they described themselves as being victims within this incident. However, all three failed to appear for scheduled interview appointments. As a result, the investigation could not obtain sworn statements from them.

§ 87(2)(b) (younger sister) and § 87(2)(b) (friend) were identified by § 87(2)(b) and § 87(2)(b) as witnesses to this incident. However, the investigation was unable to reach either of them and could not obtain telephone statements.

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) or § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
- Police Officer Mele has been a member of the NYPD for five years. This is the first CCRB complaint in which he has been involved.

Findings and Recommendations

Allegation A –Force: Police Officer Evan Mele used pepper spray against § 87(2)(b)

Allegation B –Force: Police Officer Evan Mele used pepper spray against § 87(2)(b)

Allegation C –Force: Police Officer Evan Mele used pepper spray against § 87(2)(b)

Allegation D –Force: Police Officer Evan Mele used pepper spray against § 87(2)(b)

Allegation E –Force: Police Officer Evan Mele used pepper spray against § 87(2)(b)

Allegation F –Force: Police Officer Evan Mele used pepper spray against individuals.

§ 87(2)(b) was interviewed at the CCRB on August 2, 2017. § 87(2)(b) was interviewed at the CCRB on August 2, 2017, and answered follow-up questions on October 27, 2017 (Board Review 12). § 87(2)(b) provided a telephone statement on August 2, 2017 (Board Review 06). § 87(2)(b) provided a telephone statement on September 13, 2017 (Board Review 07). § 87(2)(b) provided a telephone statement on September 14, 2017 (Board Review 08). A security

guard for the Nike store and an employee of a store on the same block as the Nike store, both of whom declined to be identified beyond their first names § 87(2)(b) and § 87(2)(b) respectively), provided statements at the incident location on July 28, 2017 (Board Review 13 and Board Review 14). A doorman for the residential building across the street from the Nike store, who declined to be identified, provided a statement at the incident location on August 3, 2017 (Board Review 15). Police Officer Mele was interviewed on September 6, 2017. Police Officer Delgiorno was interviewed on September 20, 2017. Police Officer Eugene Schatz of the 1st Precinct was interviewed on October 12, 2017.

It is undisputed that, over the course of the morning of July 28, 2017, a large crowd gathered in front of the Nike store at 21 Mercer Street in Manhattan in anticipation of the limited release of a special edition product. As the crowd grew in size and occupied sidewalk areas outside of the crowd control barricades that had been set up, private security guards employed by the store and uniformed NYPD police officers tried to maintain order. However, when the front door of the store was opened by one of the guards, numerous people pushed forward in an attempt to quickly enter the store. As security guards blocked the store entrance, Police Officer Mele deployed pepper spray towards the crowd. This pepper spray affected a large number of people, including § 87(2)(b) and § 87(2)(b). In response to the pepper spray the crowd largely dispersed, moving away from the store entrance and spreading across both sidewalks and vehicle road of Mercer Street.

§ 87(2)(b) and § 87(2)(b) both provided accounts of this incident that were largely consistent with that of the other civilians and the obtained video. They both noted that § 87(2)(b) was approximately five months pregnant during the incident, a fact that is corroborated by § 87(2)(b) medical records (Privileged Documents).

§ 87(2)(b) and § 87(2)(b) all provided consistent accounts of the incident. The three men were all affected by the spray, both through direct physical contact on their skin and clothes and through airborne absorption. None of the men saw § 87(2)(b) or § 87(2)(b) during the actual deployment of the pepper spray.

Police Officer Mele stated that, after arriving at the incident area, he approached the store and took up a position just in front of the south front window of the incident store. The crowd was “restless and angry,” with “a couple” of people screaming. People were pushing and shoving to get to the front of the line. Upon his arrival at the scene, Police Officer Mele “almost immediately” noticed four people who appeared especially problematic. Police Officer Mele described these people as black and Hispanic males in their 20s, wearing dark clothing and jeans, of average to above-average size. Police Officer Mele did not observe anything to indicate that they were armed, and never saw anything to indicate the presence of a weapon on anyone’s person over the course of the incident as a whole. Police Officer Mele noticed them because they were talking in a loud, boisterous manner, refusing orders to get down off of the front steps, pushing one another, and telling people to get off of them. They were on the top step near a security guard. Police Officer Mele gave a minimum of five verbal commands for the crowd to stay orderly and to stop pushing and shoving. These orders were obeyed by most of the crowd but not these four individuals, who said things like “fuck this” in response. Police Officer Mele did not recall if they made any physical threats, and while they did not make eye contact with him or

gesture at him the timing of their responses indicated that they had heard and were responding to his commands.

Police Officer Mele saw Police Officer Venetek speak to some of the security guards and enter the store. Police Officer Venetek “pushed and shoved” his way through the crowd to get into the store, and had “prolonged” difficulty getting through it. Police Officer Venetek stayed inside of the store up until the pepper spray was used. Police Officer Mele did not recall if other officers entered the store prior to pepper spray being deployed, and noted that the store door was not easily accessible.

Police Officer Mele then issued verbal commands telling people to form an orderly line, as did approximately five to eight other officers. No supervising officer was on scene yet, as the first supervisor arrived after the pepper spray was deployed.

In the minutes leading up to the pepper spray being deployed, Police Officer Mele did not move from his position in front of the left-hand window. He did not observe anyone punch, kick, or otherwise strike another person, did not see anyone who appeared physically injured, and did not recall hearing anyone make any physical threat.

Approximately five minutes after arriving on scene, a security guard went into the store. Police Officer Mele believed, during his CCRB interview, that members of the crowd on the store steps thought that the guard was favoring certain people and letting them into the store ahead of others. Police Officer Mele believed that this prompted the aforementioned four people to begin shoving other people. As this was happening, the store door opened. Police Officer Mele saw these four people pushing other members of the crowd in such a way that two or three other people fell or lost their balance. The four suspects were standing on the two or three middle stairs, and the alleged victims fell down off of the stairs and to the south, towards Police Officer Mele’s position. The alleged victims did not land on the ground, but one of them, a male, made contact with Police Officer Mele before standing back up on the stairs.

Based on this shoving, Police Officer Mele decided to arrest the four suspects for disorderly conduct. He decided to use pepper spray against these four suspects to make them easier to apprehend. When asked what led him to conclude that pepper spray was the best force option available, Police Officer Mele explained that he was not able to get to the suspects quickly enough due to the size and density of the crowd. He further stated that he felt that pepper spray was the right level of force to apprehend the suspects. Police Officer Mele further explained that Police Officer Venetek was on the other side of the door from the suspects, and he did not want people running in towards his fellow officer. When asked, Police Officer Mele explicitly stated that he had no intention of using pepper spray as a crowd control device, and at no point was he attempting to disperse the crowd.

During his interview, Police Officer Mele provided a description of his training in regards to the use of pepper spray. He received training at the Police Academy during his time as a cadet, between January and July of 2012. In addition to this initial training, Police Officer Mele has received a refresher course once every sixth months since graduating the Police Academy. All of Police Officer Mele’s training has been built around the basic protocol of spraying a specific

suspect and then apprehending them. He has not received any supplementary or additional training, and has never been trained to use pepper spray as a crowd control technique.

Police Officer Mele was still in his original position by the southern store window when he decided to use pepper spray. At this point, PO Venetek was inside the store near the front door and PO Delgiorno was standing on a metal grate near the bottom of the stairs. Police Officer Mele could not see any other officers due to the density of the crowd. Police Officer Mele gave verbal commands for the suspects to stop what they were doing, get off of the stairs, and back away from the door. Police Officer Mele never threatened the use of pepper spray verbally or brandished the spray container prior to using it.

When asked, Police Officer Mele said that he did not move into the crowd at all immediately prior to deploying the pepper spray. Rather, he used it from a standing position. Police Officer Mele never made contact with any female crowd members and never pushed his way through the crowd. He never made eye contact with anyone in the crowd, or sprayed pepper spray into anyone's face directly. He did not see anyone looking at him as he discharged the spray.

The four suspects were approximately four to six feet away from Police Officer Mele, standing on the store stairs, as he withdrew his pepper spray. The metal railing of the store stairs was between Police Officer Mele and the suspects, though Police Officer Mele could not recall whether there was a police barricade separating them. There were approximately 10 to 15 people in between Police Officer Mele and the suspects, arranged so that there were approximately six or seven "rows" of people between Police Officer Mele and the suspects.

Police Officer Mele attempted to pepper spray the four suspects. He pointed the spray with his right hand at approximately his head level, aimed it towards the four people, and deployed in the spray. Police Officer Mele did not recall if he ever held the spray can above his head. Police Officer Mele described the first burst of spray as lasting between one and two seconds, and "believed" that he then sprayed a second, similar burst. He angled the can upwards, as his targets were elevated relative to his own position. Police Officer Mele could not recall or describe the trajectory of the spray within the air. Police Officer Mele did not move the can from side to side as he deployed the spray.

Police Officer Mele did not recall which burst, if either, hit his desired targets. When asked if the spray hit any of the people standing in between Police Officer Mele and the targets, Police Officer Mele said that "apparently it did" but that he was not aware of this until after the incident. The four suspects "screamed," pushed their way out of the crowd, and fled northbound along the west side of Mercer Street. Approximately 40 to 60 people (most of the crowd at this point) began to move at the same time. Police Officer Mele had the sense that this was in response to the deployment of the pepper spray. People reacted to the pepper spray as though it hurt their eyes. Police Officer Mele experienced a stinging sensation in his right eye that he attributed to the pepper spray.

As Police Officer Mele deployed the spray, the other nearby officers were trying to keep people out of the street to keep them from getting hurt. None of the other officers used pepper spray or used physical force. Police Officer Mele did not communicate with other officers about the

fleeing suspects. Police Officer Mele did not pursue the four suspects as he was administering aid and the four suspects got lost in the crowd. When asked to explain how he administered aid, Police Officer Mele said that he was generally asking the crowd if everyone was OK and ordered an ambulance prior to anyone asking for medical aid.

Police Officer Delgiorno and Police Officer Schatz both provided accounts of this incident that were largely consistent with one another and with civilian accounts. Their accounts contradicted Police Officer Mele's on multiple points, however. Police Officer Schatz entered and exited the store approximately two to four times prior to pepper spray being deployed, and never felt threatened by the crowd on the store steps as he passed through them. He did not remember having to issue any commands for people to back away for him. When asked to specify what factors, if any, led him to believe there was a safety issue, Police Officer Schatz did not recall any particular individuals appearing noticeably dangerous to him or being identified to him by other officers as dangerous.

Police Officer Delgiorno stated that when he arrived on scene, the crowd was not "irate" and people were not physically violent. When asked, he stated that the crowd did not impede Police Officer Venetek's entry into the store. Over the approximately 15 to 20 minutes he was waiting on scene prior to the deployment of pepper spray, Police Officer Delgiorno did not observe any change in the crowd's demeanor. He did not notice any increase in hazardous conditions over this time, and no one was arrested, detained, or summonsed. In the approximately 15 to 20 seconds prior to the deployment of pepper spray, Police Officer Delgiorno did not observe any significant change in the crowd. He did not see anyone who could have been detained or arrested. He did not see anything that was hazardous. He did not see any conditions that required the crowd to be quickly dispersed.

The security videos obtained by the investigation provide an account of the incident that contradicts Police Officer Mele's account in several ways. The two videos recorded by a camera outside of 22 Mercer Street (embedded above as 2017-10-26_12-35-22_Arrival.mp4 and 2017-10-26_12-47-57_OC_Spray.mp4) show that Police Officer Mele was standing, for more than ten minutes, across the street from the incident store. It is from this position that he approached the crowd before deploying the pepper spray, not from a position directly in front of the store as he described. Police Officer Mele was actually the officer furthest from the store door during the lead-up to the pepper spraying, with six uniformed officers visible both in the video and, apparently, to Police Officer Mele. (This is not counting Police Officer Venetek and Police Officer Schatz, who were inside the store during this time.) From this position, Police Officer Mele crossed the width of Mercer Street before un-holstering his pepper spray, raising it above his head, and deploying it while waving the canister from side to side (see videos embedded below). The videos collectively show that dozens of people moved quickly away from the store entrance in response to the spray, with numerous people covering their faces or eyes with their hands and clothing.



2017-11-27_15-23-37_Short_Nike.mp4



2017-11-27_15-20-38_Short_OC_Spray.mp4

According to Section 221-01 of the New York City Police Department Patrol Guide, any application or use of force by an officer must be reasonable under the circumstances (Board Review 10). According to Section 221-07, the use of pepper spray constitutes physical force. Furthermore, officers should avoid discharging pepper spray indiscriminately over a large area for disorder control without being specifically trained in this manner of use.

As noted above, Police Officer Mele described his use of pepper spray as being founded on the need to apprehend four males for disorderly conduct. Police Officer Mele was unable to provide precise descriptions of these males. Based on the video footage, Police Officer Mele would have been separated from these males by the full width of Mercer Street (approximately twelve feet), the western sidewalk (approximately four feet), and the front stairs of the store (approximately five feet). The males would have been surrounded by a crowd of more than 50 people, most of whom were actively pushing towards the store entrance in the lead-up to the pepper spray deployment. It is not credible that, given these factors, Police Officer Mele would have been able to distinguish the actions of four specific people as violating the disorderly conduct statute from within the greater mass of the crowd.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Finally, the Patrol Guide recommends against untrained officers using pepper spray for crowd control. Doing so carries with it the risk that a large crowd, when pepper sprayed, may respond in

a hazardous manner. The risk of prompting a “stampede” in which people shove, trample, or otherwise harm one another as they flee from the pepper spray must be balanced against the misconduct that is being targeted. In this case, it was not reasonable for Police Officer Mele to attempt to stop a small group of people from shoving one another by taking an action that was likely to prompt a large group of people to become disoriented and possibly react unexpectedly to being pepper sprayed. It was especially unreasonable given the overall circumstances. The crowd was partially constrained by steel barricades, was bordered on one side by the store’s full-length plate glass windows, and was loosely surrounded by other officers. By discharging his pepper spray in the manner that he did, Police Officer Mele created a situation in which a large crowd quickly began fleeing directly towards his fellow officers, who, as per Police Officer Mele himself, had almost no warning that this was about to happen.

§ 87(2)(g)

Allegation G –Force: Police Officer Evan Mele used physical force against § 87(2)(b)

§ 87(2)(b) stated that, immediately prior to being pepper sprayed, she was approximately two to three feet south of the store stairs. As she saw the crowd begin to push one another, § 87(2)(b) started backing away from the barricade. She turned her head to look behind her as she walked backwards. Police Officer Mele “came out of nowhere,” at which point § 87(2)(b) felt a sharp pain in her left side. She saw Police Officer Mele make a swimming or pushing motion with his arms as he “charged” towards the barricades. His elbow struck her in the side as he did this. Upon being hit in the side, § 87(2)(b) turned so that she was facing Police Officer Mele, with her back towards the barricades. She saw his container of pepper spray approximately one or two feet directly in front of her face. She saw the spray come out of the container, at which point her eyes went black. § 87(2)(b) believed that Police Officer Mele sprayed her intentionally, given how close they were.

§ 87(2)(b) medical records from § 87(2)(b) (Privileged Documents) indicate that, after the incident, § 87(2)(b) reported pain in the lower left quadrant of her abdomen. Medical staff noted that the reportedly affected area was “tender to palpation” but that “no hematomas or other obvious signs of trauma” were visible.

In their statements, § 87(2)(b) and § 87(2)(b) all stated that they did not see where § 87(2)(b) was when the pepper spray started or see her get physically struck by any particular individual.

Police Officer Mele stated that prior to the deployment of pepper spray, a male individual was pushed by members of the crowd so that he fell on to Police Officer Mele. Police Officer Mele denied seeing anyone in the crowd who appeared pregnant and denied pushing or striking § 87(2)(b) with his arms. Police Officer Mele did not recognize a photograph of § 87(2)(b) and stated

that he did not speak to § 87(2)(b) during the incident (rather, his partner, Police Officer Delgiorno, spoke to her).

Police Officer Delgiorno and Police Officer Schatz denied seeing Police Officer Mele push or strike § 87(2)(b) or anyone else. Both officers noted that due to the size and density of the crowd and their positions relative to Police Officer Mele during the initial moments of the pepper spray deployment that they were unable to see him clearly.

The obtained video footage does not show the exact moments in which Police Officer Mele first deploys his pepper spray. Police Officer Mele leaves the frame of the video recorded by the 22 Mercer Street camera as he is unholstering and raising the pepper spray canister, and he enters the frame of the video recorded by the Nike store camera with his hand already raised above his head.

§ 87(2)(g)

According to Section 221-01 of the New York City Police Department Patrol Guide, any application or use of force by an officer must be reasonable under the circumstances (Board Review 10).

§ 87(2)(g)

Squad: 2

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date